

*REMARKS**Response to Restriction Requirement*

Applicants confirm the election of claims 1-5 of Group I, with traverse. Claims 6-9 have been cancelled as being drawn to non-elected subject matter. Applicants reserve the right to pursue the non-elected subject matter in one or more continuing applications.

*Objections to the Specification*

The specification has been objected to as allegedly containing informalities. The specification has been amended to address the objections. The specification amendments are believed to render moot the objections thereto.

*Rejection under 35 U.S.C. § 112*

Claims 2-5 have been rejected as allegedly indefinite. Applicants do not agree with the indefiniteness rejection; however, in an effort to expedite prosecution of the present application, and not in acquiescence of the indefiniteness rejection, claim 4 has been cancelled and claims 1-3 and 5 have been amended to further clarify the subject matter recited therein. The claim amendments are believed to render moot the indefiniteness rejection.

*Rejection under 35 U.S.C. § 102(b)*

Claims 1-2 and 4-5 have been rejected under 35 U.S.C. § 102(b) as allegedly anticipated by U.S. Patent No. 6,162,845 (“Freed”). However, Freed does not teach or suggest concrete-based floor and wall coverings in which an antimicrobial agent is homogeneously distributed in the base material, as required by the claims. Freed (e.g., at col. 1, lines 8-13) teaches incorporating an antimicrobial agent in reinforcing fibers that can be used in concrete production. According to Freed (e.g., col. 6, lines 6-14), the antimicrobial compound is preferably included within the reinforcing fiber, e.g., “while the fiber-forming polymers or materials are in the molten or liquid state,” or, less preferably, is coated onto the fiber. Freed does not teach or suggest floors and wall coverings with an effective amount of microbicide homogeneously distributed in the base material to avoid fixation, growth and propagation of microorganisms on surfaces thereof, as required by the claims of the present application. As such, Freed does not anticipate the claimed invention.

Claims 1-2 have been rejected as allegedly anticipated by U.S. Patent No. 6,350,305, which Applicants believe is intended to be 6,350,304 (“Tozaka”). However, Tozaka does not teach or suggest concrete-based floor and wall coverings in which an antimicrobial agent is homogeneously distributed in the base material, as required by the claims. Tozaka teaches incorporating microcapsules that contain a liquid, which contains hinokitiol. See Tozaka, e.g., Fig. 1, which illustrates the microcapsules in a cross-sectional view of the disclosed construction material. Tozaka (e.g., col. 2, lines 1-5) also teaches that the microcapsules in the construction base material “gradually collapse one by one as time goes by” and that the hinokitiol to “transudes” into the construction base material. However, Tozaka does not teach or suggest floors and wall coverings with an effective amount of microbicide, which is homogeneously distributed in the base material to avoid fixation, growth and propagation of microorganisms on surfaces thereof, as required by the claims of the present application. As such, Tozaka does not anticipate the claimed invention.

*Rejections under 35 USC § 103*

Claims 1-4 have been rejected as allegedly obvious in view of U.S. Patent No. 6,777,103 (“Merkley”). However, Merkley does not disclose concrete-based floor and wall coverings, as the office action acknowledges. Further, Merkley does not teach or suggest concrete-based floor and wall coverings in which an antimicrobial agent is homogeneously distributed in the base material, as required by the claims. Merkley teaches incorporating a biocide into cellulose fibers that can be used for reinforcing construction materials. Merkley (e.g., Fig. 1) also teaches formulating the cellulose fibers into a mixture, which is fabricated into a “green” cured shaped article. However, Merkley does not teach or suggest floors and wall coverings with an effective amount of microbicide homogeneously distributed in the base material to avoid fixation, growth and propagation of microorganisms on surfaces thereof, as required by the claims of the present application. Moreover, there is nothing in Merkley that would have motivated a person of ordinary skill in the art to modify the disclosed construction materials so as to arrive at the claimed invention. As such, the claimed invention is not obvious over Merkley.

Claims 1-3 have been rejected as allegedly obvious in view of U.S. Patent No. 5,421,867 (“Yeager”). However, Yeager describes mortar, grout, stucco and backerboard compositions that contain a pre-determined amount of copper-8-quinolinolate. Yeager does

not disclose concrete-based floor and wall coverings, as the office action acknowledges. Further, Yeager does not teach or suggest floors and wall coverings with an effective amount of microbicide homogeneously distributed in the base material to avoid fixation, growth and propagation of microorganisms on surfaces thereof, as required by the claims of the present application. Indeed, Yeager explicitly distinguishes concrete from the disclosed construction materials, e.g., at col. 2, lines 63-67, which states: "Concrete is significantly different from mortar, grout, backerboard and stucco because of its composition and additives, the proportions and ratios of concrete's various elements, the large aggregate size and the uses of concrete." In view of its teaching, Yeager simply would not have motivated a person of ordinary skill in the art to modify the disclosed construction materials so as to arrive at the concrete-based floor and wall coverings as claimed in the present application. As such, the claimed invention is not obvious over Yeager.

In view of the foregoing, the claimed invention is not indefinite, and is patentable over the cited references. Accordingly, withdrawal of the objections and rejections is respectfully requested.

#### *Conclusion*

If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the subject application, the Examiner is invited to call the undersigned attorney.

Respectfully submitted,

  
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